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SERVICE DATE - JANUARY 29, 2003

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-364 (Sub-No. 7X)]

The Texas Northeastern Division, Mid-Michigan Railroad, Inc.—Discontinuance of Service
Exemption—in Grayson County, TX

The Texas Northeastern Division, Mid-Michigan Railroad, Inc. (TNER), has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service to discontinue service over 10.51 miles of railroad between milepost 662.54 in Denison and milepost 673.05 in Sherman, in Grayson County, TX (the line).¹ The line traverses United States Postal Service Zip Codes 75020, 75021, 75090, 75091, and 75092.

¹ According to TNER's Environmental Report, the Missouri-Kansas-Texas Railroad Company (MKT) operated the line until MKT merged into the Missouri Pacific Railroad Company (MP). At the time of the merger, MKT was authorized to abandon the line. See Union Pacific Corp. et al.—Cont.—MO-KS-TX Co. et al., 4 I.C.C.2d 409, 488-89 (1988)(UP/MKT). Although TNER contends that MKT consummated the abandonment before the line was leased to TNER, it appears that this was not the case, as an exemption was obtained for lease of the line from MP, now Union Pacific Railroad Company (UP), in Mid Michigan Railroad Company, Inc.—Lease and Operation Exemption—Missouri Pacific Railroad Company, Finance Docket No. 31646 (ICC served Aug. 28, 1990). In addition, it does not appear that the abandonment could have been consummated because there is an historic preservation condition under section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f), imposed in UP/MKT at 577, that remains outstanding. Accordingly, although TNER is the last carrier operating over this line, UP, as the owner of the line and successor-in-interest to MP, retains a common carrier obligation.

TNER has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 28, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues² and formal

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),³ must be filed by February 10, 2003.⁴ Petitions to reopen must be filed by February 18, 2003, with: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to TNER's representative: Louis E. Gitomer, Ball Janik LLP, 1455 F St., N.W., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void ab initio.

TNER has filed a separate environmental report which addresses the discontinuance's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by February 3, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

³ Each OFA must be accompanied by the filing fee, which is currently set at \$1,100. See 49 CFR 1002.2(f)(25).

⁴ Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate.

Environmental or historic preservation conditions will be imposed, where appropriate, in a subsequent decision.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: January 24, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary